



**Attorney General
Betty D. Montgomery**

October 2, 1996

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Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

Re: *In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934, WT Docket 96-162.*

Dear Mr. Caton:

Enclosed please find the original and ten copies of the Public Utilities Commission of Ohio comments **In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934, WT Docket 96-162.** Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope

Thank you for your assistance in this matter.

Respectfully submitted,

Ann E. Henkener

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
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Amendment of the Commission's Rules to)
Establish Competitive Service Safeguards)
for Local Exchange Carrier Provision of)
Commercial Mobile Radio Services)
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Implementation of Section 601(d) of the)
Telecommunications Act of 1996, and)
Sections 222 and 251(c)(5) of the)
Communications Act of 1934)

WT Docket 96-162

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**EXECUTIVE SUMMARY OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The PUCO submits that the 1996 Act does not confer intrastate jurisdiction upon the FCC and does not curtail state authority over intrastate issues. In particular, Section 2(b) of the Communications Act of 1934 was not amended by the 1996 Act. That section provides an express limitation on the FCC's jurisdiction that "nothing in this Act shall be construed to apply to or give the FCC jurisdiction with respect to: (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier." 47 U.S.C. Section 152(b).

The PUCO believes that the FCC should continue to impose the standards established in the Computer II inquiry regarding structural separation and non-discrimination, rather than standards consistent with Computer III. The PUCO further believes that structurally separate affiliates would render the transactions more visible thereby acting as a preventative measure to interconnection discrimination. In the event the FCC elects not to impose such standards, the PUCO

maintains that the individual states should continue to impose, upon their own discretion, such standards on companies providing local service in order to ensure a thriving competitive marketplace.

The PUCO maintains that structurally separate subsidiary requirements are necessary to guard against BOC price discrimination (and as discussed later Tier 1 LECs) in favor of their own cellular operations and against other CMRS competitors. The PUCO finds support for its position that structurally separate affiliate requirements should continue to apply to the provision of BOC cellular services in the Joint Federal/State Audit of the Ameritech Telephone Operating Companies' (AOCs') transactions with their affiliate, Ameritech Services, Inc. (ASI).

The PUCO submits that each state maintains a unique regulatory structure and competitive situation which requires emphasis be placed on differing matters. It is not possible for the FCC to design a set of rules that would encompass all of the unique regulatory concerns of all of the states at all times. This vital role is to, of necessity, be filled by the states. The states could be very hampered in their ability to fulfill their obligations unless they are permitted to impose (at their discretion) local additional conditions upon the separations rules established by the FCC. The PUCO, for example, observes that in Ohio one LEC is subject to price caps regulation, two other LECs are subject to other forms alternative streamlined regulation, while LECs with less than 15,000 access lines are subject yet to another form of streamlined regulation. As a result, the PUCO notes that only the Ohio Commission can arrive at regulations that will take into consideration each individual company's regulatory parameters. The PUCO notes, however, that such local, additional (or differing) requirements should not conflict with the FCC's structure but rather serve to enhance the effectiveness of regulation. It is through this system of co-operation that truly effective competition can be achieved in all locales in the country.

The PUCO believes that the FCC should continue prescribe cellular structural separation requirements on both BOC and Tier 1 non-BOC LECs providing in-region and out-of-region cellular service. Specifically, any revised separation requirements should provide the same level of safeguards as those currently imposed on BOC LECs engaged in the provision of cellular service. The PUCO maintains that structural separation will ensure against abuse of the relationship between the LEC and its affiliate. Requiring BOC and Tier 1 independent LECs to maintain separate affiliates to provide competitive services lessens the opportunities for cost-shifting, price discrimination and interconnection discrimination, and increases the ability of both competitors and the FCC to detect any anti-competitive behavior. Also, we are of the opinion that requiring BOC and Tier 1 non-BOC LECs to comply with structural separation requirements would not impose an excessive or undue financial burden on those entities.

The PUCO agrees with the tentative conclusion reached by the FCC. The PUCO contends that the costs of imposing either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on non-Tier 1 independent and rural LECs would have a relatively greater financial impact on those smaller carriers as compared to larger Tier 1 LECs. The PUCO submits that these smaller carriers may not possess the financial or manpower capabilities to meet either of these requirements. Further, the PUCO believes the non-Tier 1 LECs lack the market power of the BOCs or other Tier 1 LECs with multistate operations and thus the ability to hinder competition from emerging. Because of the costs of separate incorporation, and the lost economies of scope, we urge that non-Tier 1 independent and rural LECs be exempted, as proposed by the FCC, from compliance with either requirement.

The PUCO strongly believes that anti-competitive opportunities exist with the integrated LEC provision of landline and PCS outside of the local exchange

service areas in which they are the incumbent LEC. As the PUCO expressed in its comments to the Commission in CC Docket No. 96-21, structural separation should prevent, or ease the detection of , local ratepayers from subsidizing BOC/LEC out of region ventures, and will ensure that a LEC's market power is separated from that of its affiliate.

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**INITIAL COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) hereby submits its initial comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in WT Docket No. 96-162 (In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for the Local Exchange Carrier Provision of Commercial Mobile Radio Services; and, Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934). Initial comments in response to the above-captioned NPRM are due at the FCC on or before October 3, 1996.

BACKGROUND

On August 13, 1996, the FCC released its NPRM in the above-captioned proceeding. In its NPRM, the FCC undertakes a comprehensive review of its existing regulatory framework of structural and non-structural safeguards

concerning local exchange carriers' (LECs') provision of cellular services. In particular, the FCC questions, among other things, whether its requirement that Bell Operating Companies (BOCs) must provide cellular service through a structurally separate corporation should be removed, and whether these requirements continue to serve the public interest. The FCC further proposes to examine the provision of in-region wireless services by all local exchange carriers, and the effects of the 1996 Act on its existing and proposed rules.

The FCC proposes two options that would move BOCs out from under its commercial mobile radio services (CMRS) structural separation requirements. The first option would impose streamlined separate affiliate nondiscrimination requirements on the BOCs, but would remove these separate affiliate restrictions when the BOC receives authorization to provide in-region, interLATA service. The second option would eliminate immediately the BOCs' CMRS separate affiliate requirements. Both proposed options would continue to require the companies to abide by certain affiliate transactions and cost allocation rules.

The FCC's NPRM further proposes that all Tier 1 LECs be required to provide both CMRS and broadband personal communications service (PCS) subject to uniform competitive safeguards. In particular, the FCC proposes that Tier 1 LECs be required to adhere to specific uniform competitive service safeguards for the provision of both CMRS and broadband PCS. These safeguards would include, among other things, requiring these carriers to meet certain specific affiliate accounting requirements and nondiscrimination safeguards.

DISCUSSION

Section IV

Analysis of Continued Need for Section 22.903, Interconnection Discrimination Potential

As mentioned above, the FCC seeks comment on its proposal to eliminate its current requirement that BOCs must provide cellular service through a structurally separate corporation. NPRM at Paragraph 1. Specifically, the FCC seeks comment as to whether in-region application of separate affiliate and nondiscrimination requirements would continue to serve as an important regulatory check on the BOCs' local exchange market power. NPRM at Paragraph 42. The FCC notes that it believes that it will be particularly crucial to retain some form of separate affiliate requirement, either structural or nonstructural, as new CMRS entrants begin to negotiate their interconnection agreements with the incumbent BOCs and seeks comment on its analysis. NPRM at Paragraph 43.

The PUCO endorses the move toward competition in the telecommunications industry. The PUCO further believes that steady, unimpeded progress towards this goal requires that the integrity of the process is maintained and that all parties and stakeholders have confidence in the fairness of the results. In these circumstances, with new and continually changing conditions, refined accounting safeguards such as those proposed by the FCC are required, but not diluted ones. Failure to provide confidence and assurance to core customers will itself impede progress toward competition. It is not a question of more regulation or less regulation, but one of appropriate regulation, that is critical in managing the transition to a competitive telecommunications industry.

The PUCO submits that the FCC should provide the greatest deference possible to the states on matters essentially intrastate in nature. The 1996 Act does not confer intrastate jurisdiction upon the FCC and does not curtail state authority

over intrastate issues. In particular, Section 2(b) of the Communications Act of 1934 was not amended by the 1996 Act. That section provides an express limitation on the FCC's jurisdiction that "nothing in this Act shall be construed to apply to or give the FCC jurisdiction with respect to: (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier." 47 U.S.C. Section 152(b). Further, Section 601(c) of the 1996 Act specifies that the 1996 Act "shall not be construed to modify, impair or supersede federal, state, or local law unless expressly so provided in such Act or amendments." Because the 1996 Act did not repeal these provisions, a role for the state commissions was clearly envisioned by the legislature. State commissions have had experience dealing with affiliate transactions, and their collective expertise should be utilized in determining how to deal with affiliate relationships in the future.

As discussed in more detail later in these comments, the PUCO believes that the FCC should continue to impose the standards established in the Computer II inquiry regarding structural separation and non-discrimination, rather than standards consistent with Computer III. The PUCO submits that the effective enforcement of nondiscrimination rules depends upon the visibility of the transactions under scrutiny. The PUCO further believes that structurally separate affiliates would render the transactions more visible thereby acting as a preventative measure to interconnection discrimination. The PUCO is convinced that structural separations are needed to ensure a vibrant, competitive cellular services marketplace. As a result, in the event the FCC elects not to impose such standards, the PUCO maintains that the individual states should continue to impose, upon their own discretion, such standards on companies providing local service in order to ensure a thriving competitive marketplace.

Analysis of Continued Need for Section 22.903, Price Discrimination

The FCC seeks comment on the argument that cross-subsidization is possible, even in a price caps environment, taking into consideration the FCC's cost allocation and affiliate transaction rules. NPRM at Paragraph 44. The FCC indicates that it is concerned that the possibility of price discrimination by a BOC or incumbent LEC in favor of its own cellular operations and against other CMRS providers could be increased without some form of separate subsidiary requirement. NPRM at Paragraph 44. The FCC further requests comments on the value of separate affiliates in detecting and deterring pricing discrimination, and whether the degree of separation has any effect on the value of this safeguard. NPRM at Paragraph 44.

Another potential example of the need to give states flexibility to craft individual solutions to complaints, and an example of a potential case of anti-competitive conduct is a complaint filed by Cellnet, a cellular retailer, against four of the cellular wholesalers licensed in Ohio. Cellnet is alleging that the wholesalers are favoring their affiliated retailers over non-affiliated retailers, are offering bundled services through their retail arms at less than cost, and are failing to offer wholesale capacity on wholesale basis. Should these allegations prove to be true, the Ohio commission may have reason to require more definitive separations between wholesalers and their affiliated retailers. This same type of "price squeeze" could also occur between landline and cellular services in which a LEC favors its own cellular affiliate over non-affiliates. The price squeeze occurs when the LEC charges excessively high access rates which allow its own affiliate to operate at a low margin or even a loss while the company as a whole achieves a high profit margin.

The PUCO maintains that structurally separate subsidiary requirements are necessary to guard against BOC price discrimination (and as discussed later Tier 1 LECs) in favor of their own cellular operations and against other CMRS competitors.

The PUCO finds support for its position that structurally separate affiliate requirements should continue to apply to the provision of BOC cellular services in the Joint Federal/State Audit of the Ameritech Telephone Operating Companies' (AOCs') transactions with their affiliate, Ameritech Services, Inc. (ASI). The joint audit team's objective was to evaluate compliance with the FCC's affiliate transaction rules, and specifically, to determine whether ASI's costs were properly identified and allocated to regulated and non-regulated accounts. The audit team found that, in many cases, Ameritech did not provide or could not produce sufficient documentation to allow a determination of whether the costs associated with ASI services provided to the AOCs had been properly allocated between regulated and non-regulated operations. The audit team concluded that Ameritech had not properly allocated such costs. As a result, a Consent Decree was entered into by the FCC, the PUCO, the Public Service Commission of Wisconsin (PSCW), and the Ameritech Operating Companies (Consent Decree Order, Released June 23, 1995, AAD 95-75). Pursuant to the Consent Decree, the FCC and the state commissions agreed to refrain from pursuing enforcement actions against the AOCs, and Ameritech agreed to make serious and substantial revisions to ASI's documentation procedures regarding affiliate transactions accounting and reporting practices. Although Ameritech admitted no wrongdoing, the questions raised by the joint audit and resolved by the consent decree show clearly that effective regulation requires a role for both the states and the FCC.

Additionally, the PUCO maintains that the elimination of separate subsidiary requirements could result in the misallocation of common costs. An over allocation of joint and common costs to the local exchange operations could result in inflated prices for cost-based interconnection, since rules promulgated by the FCC in CC Docket No. 96-98 establish that an appropriate allocation of joint and common costs is to be recognized in total element long run incremental cost (TELRIC) studies

establishing interconnection rates. Expressed another way, the PUCO maintains that unless structural separate subsidiaries are maintained, LECs could allocate a disproportionate amount of joint and common costs to local exchange services thereby needlessly inflating the cost for local service interconnection, and correspondingly lowering the costs for less regulated wireless operations, which will increase cellular profits and thwart competition. Finally, the PUCO observes that the maintenance of LEC structurally separate subsidiaries for the provision of cellular services will minimize (or eliminate) joint and common costs, thereby easing the burden of detection of misallocated costs and price discrimination.

Concerning the FCC's request for comment on the continuing need for structurally separate affiliate requirements in a price caps environment, the PUCO observes that price caps regulation does not obviate the need to have strict controls over cost allocations and separate affiliate requirements. In support of its belief, the PUCO observes that the various price caps systems are, in fact, experiments which are subject to review at periodic intervals. The validity of these experiments requires appropriate accounting systems and audit trails to make meaningful comparisons. While Ameritech's intrastate rates are subject to a price caps regulation plan in Ohio, at the conclusion of this plan, the PUCO will evaluate the efficacy of this type of regulation. During the periodic review, financial performance measures, among other additional factors, may be taken into consideration by the PUCO. As a result, Ameritech could be incented to misallocate costs from its affiliate companies to local exchange regulated operations.

Likewise, concerning individual state regulation, the PUCO observes that, while the many State commissions might subscribe to FCC accounting policy, practices, and procedures, there are situations where federal accounting practices could be inconsistent with State rules and rate setting policies. State commissions, therefore, require the necessary flexibility to implement intrastate accounting rules

based on their rate setting regime and regulatory laws. The PUCO observes that it regulates over forty LECs. One company (Ameritech) has its intrastate rates established under a price cap regime. Two other LECs have rates established under alternative regulation rules promulgated by the PUCO, and the remaining companies' rates were established under traditional rate-of-return regulation. Different rate setting regimes may warrant different accounting prescriptions.

Analysis of Continued Need of Section 22.903, Cross-subsidization

The FCC requests comments on the BOCs argument that cross-subsidization no longer serves as a rationale for keeping the structural separation requirement of Section 22.903. NPRM at Paragraphs 45 and 46.

The PUCO, as previously mentioned in these comments and its Reply Comments in CC Docket Nos. 96-149 and 96-150, asserts that over-allocation of costs to the LEC operations could result in inflated rates for interconnection. Further, cost misallocations could confer a competitive advantage upon the affiliated cellular company through artificially reduced costs. The PUCO believes that structural separation of the LEC and cellular operations would minimize the potential for such misallocations.

The FCC seeks comment on whether integrated BOC local exchange and cellular services would present realistic opportunities for anti-competitive conduct and, if so, whether safeguards less restrictive than the current structural separation rules would sufficiently constrain such conduct. NPRM at Paragraph 49.

The PUCO maintains that strict nondiscrimination policies are necessary in an emerging competitive environment. In support of its position, the PUCO calls to the FCC's attention that, in a case involving Ameritech Ohio, a complaint was brought by Voice-Tel, a provider of network-based voice messaging services in Ohio. Ameritech Ohio (formerly Ohio Bell) provided similar services. Voice-Tel alleged

that Ameritech had used customer information obtained from Voice-Tel to solicit Voice-Tel's customers to use Ameritech's services instead of Voice-Tel. Voice-Tel further alleged that Ameritech had waived certain non-competitive network service charges in connection with Ameritech's voice mail service offerings while not waiving such charges for Voice-Tel or Voice-Tel's customers. In addition, Voice-Tel alleged that Ameritech reduced its rates for non-competitive services below tariffed rates. While not admitting fault, Ameritech Ohio entered into a stipulated settlement with Voice-Tel which provided numerous competitive safeguards for providers of competitive services such as Voice-Tel. This is an example of why an individual state, such as Ohio, needs the ability to provide a forum in which competitors such as Voice-Tel may seek a remedy for allegations of anti-competitive conduct on the part of an incumbent local exchange company. Further, individual state commissions need the latitude to fashion appropriate remedies, depending on situations which are presented. One remedy, depending on the situation, may be to impose additional structural or nonstructural safeguards between affiliate entities.

The PUCO also believes that the states could be hampered in their ability to fulfill their obligations unless they are permitted to impose local, additional conditions upon the separation structure established by the FCC. Such state-specific additional requirements should not conflict with the FCC's structure, but rather serve to enhance the effectiveness of regulation. In particular, each state maintains a unique regulatory structure and competitive situation which requires emphasis be placed on differing matters. It is not possible for the FCC to design a set of rules that would encompass all of the unique regulatory concerns of all of the states at all times. This vital role is to, of necessity, be filled by the states. The states could be very hampered in their ability to fulfill their obligations unless they are permitted to impose (at their discretion) local additional conditions upon the separations rules established by the FCC. Taking into consideration the various forms of LEC

regulation in Ohio, for example, the PUCO notes that only the Ohio Commission can arrive at regulations that will consider each company's regulatory parameters. The PUCO notes, however, that such local, additional (or differing) requirements should not conflict with the FCC's structure but rather serve to enhance the effectiveness of regulation. It is through this system of co-operation that truly effective competition can be achieved in all locales in the country.

Analysis of Continued Need of Section 22.903, Leveraging of Market Power

The FCC seeks comment on whether its current requirements or some lesser degree of separation is warranted for BOC cellular service during the period of transition to a more competitive telecommunications market. NPRM at Paragraph 48.

The PUCO agrees that integrated operations possess the potential for efficiencies, yet at the same time would increase the potential for anti-competitive abuses. The PUCO recommends that to err on the side of conservatism is the appropriate response in these circumstances and therefore recommends continuation (for the time being) of the FCC's current structural separation rules.

Ownership of Landline Facilities

The FCC seeks comment on its proposal to amend its rules prohibiting a BOCs' cellular affiliate from owning any facilities for the provision of landline service to permit a BOC cellular affiliate to own landline facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange service in the same market with the incumbent LEC. NPRM at Paragraph 59. Thus, the FCC notes, the rule would be modified only to prohibit the cellular affiliate from owning facilities that the incumbent LEC uses in the provision of local exchange service. NPRM at Paragraph 59. Expressed another way,

the FCC's NPRM proposes to retain its prohibition against a BOC cellular affiliate owning any landline facilities that the incumbent affiliated LEC uses in the provision of landline local exchange services, but would permit the cellular affiliate to own local landline facilities for the provision of, among other things, competitive landline local exchange service.

As mentioned earlier in these comments, the PUCO maintains that the individual states must be afforded the latitude to impose any additional separate affiliate (including structural) requirements it deems necessary to ensure a robust competitive market for all involved. If the FCC were to conclude that cellular services, in addition to manufacturing, information, and interLATA services were ultimately appropriately located within an affiliate that also provides local exchange service, the PUCO's concerns regarding the shifting of common costs to the BOC from affiliates, the determination of what equipment is for basic local service versus cellular service, and the potential for gaming in the absence of structural safeguards, would only be exacerbated. Specifically, the PUCO submits that it would not be possible to determine with any degree of certainty the accurateness cost allocations for equipment and personnel among all the companies involved.

Analysis of Continued Need of Section 22.903, Costs and Benefits of Integrated Versus Structurally Separated Operations

The FCC observes that the BOCs have long sought relief from Section 22.903 structural separation requirements primarily so that they could benefit from savings associated with integrated operations and that their customers could benefit from one-stop-shopping, repair and billing needs. The FCC seeks comment regarding the BOCs' assertions. NPRM at Paragraph 51.

The PUCO is not persuaded by the BOCs' arguments. In fact, the PUCO believes those arguments to contain little merit. For these reasons the PUCO does not recommend relaxing the separation requirements of Section 22.903. The PUCO

believes the benefits to regulated ratepayers associated with continuing to require the BOCs to meet the separation requirements of Section 22.903 far outweigh the costs incurred by the affected BOCs. The PUCO maintains that to ensure that a currently fledgling local service competitive marketplace has an opportunity to flourish, the FCC should retain its separate article requirements. Not to do so, would afford incumbent LECs with the opportunity for abuses on, for example, costs allocations and discriminatory treatment in favor of its own affiliates. These separate affiliate rules should remain in place at a minimum, until the barriers to local competition have been removed, and a demonstration of adequate competition has been made.

Limitation of Section 22.903 to In-Region BOC Cellular Services

The FCC seeks comment to its tentative conclusion that the structural separation requirements of Section 22.903 for BOCs providing out-of-region cellular service should be relaxed. NPRM at Paragraph 55.

The PUCO disagrees with the FCC's conclusion. We are of the opinion that the structural separation requirements should be imposed on both the BOCs in-region and out-of-region cellular service alike. The PUCO believes that without these requirements, opportunities exist for the BOCs to subsidize competitive cellular service offerings with regulated telephone operations a competitive advantage and infer upon the BOC cellular affiliate which is not available to other cellular providers. As mentioned earlier in these comments, the PUCO agrees that integrated operations possesses the potential for more efficient operations, but would increase the potential for anti-competitive abuses.

NPRM SECTION V

Symmetry of Cellular Safeguards

The FCC's current cellular structural separation requirements apply only to the BOCs, but not to other large LECs with similar characteristics. NPRM at Paragraph 87. The FCC in Section V of its NPRM requests comments on its tentative decision not to apply the cellular structural separation requirement contained in Section 22.903 of the 1996 Act to non-BOC LECs. NPRM at Paragraph 90. The FCC believes that if it adopted its first proposal to sunset Section 22.903 in tandem with BOC entry into in-region interLATA services, and replace its provisions with streamlined safeguards proposed for in-region LEC PCS, that the relative benefits of imposing Section 22.903 on any additional Tier 1 LECs for a transition period followed by a sunset would not outweigh the costs of such requirements. NPRM at Paragraph 90. The FCC further indicates that adoption of its alternative proposal to eliminate Section 22.903 immediately would, of course, moot this issue in its entirety, NPRM at Paragraph 90.

The PUCO does not advocate the adoption of either FCC proposal mentioned above. To the contrary, the PUCO believes that the FCC should continue to prescribe cellular structural separation requirements on both BOC and Tier 1 non-BOC LECs providing in-region and out-of-region cellular service. Specifically, any revised separation requirements should provide the same level of safeguards as those currently imposed on BOC LECs engaged in the provision of cellular service. The PUCO maintains that structural separation will ensure against abuse of the relationship between the LEC and its affiliate. Requiring BOC and Tier 1 independent LECs to maintain separate affiliates to provide competitive services lessens the opportunities for cost-shifting, price discrimination and interconnection discrimination, and increases the ability of both competitors and the FCC to detect any anti-competitive behavior. Also, we are of the opinion that requiring BOC and

Tier 1 non-BOC LECs to comply with structural separation requirements would not impose an excessive or undue financial burden on those entities.

The PUCO believes that not applying cellular separation requirements to Tier 1 independent LECs gives those carriers an unfair competitive advantage over their BOC LEC competitors in the provision of cellular service. Also, the PUCO asserts that, in order to prevent the individual states' ratepayers from subsidizing both BOC and Tier 1 non-BOC LECs cellular ventures, maintaining existing separation requirements is necessary. Additionally, maintaining current separation requirements for BOC LECs and imposing those same requirements on Tier 1 non-BOC LECs will increase the states' ability to monitor compliance with the separation requirements.

The FCC seeks comment on the costs to the Tier 1 LECs of establishing nonstructurally separate affiliates as described in Section VI of the NPRM for their provision of in-region cellular service. NPRM at Paragraph 91.

The PUCO does not favor relaxing the separation requirements of Section 22.903 for Tier 1 LECs regarding their provision of cellular service. The PUCO is of the opinion that all Tier 1 LECs should adhere to the existing BOC Cellular Structural Separation requirements. The PUCO, therefore, does not agree with the FCC's proposal to require all Tier 1 LECs to implement the same streamlined safeguards for their in-region cellular service that the Commission has proposed for in-region PCS and other CMRS in Section VI of its NPRM.

As expressed previously in these comments, the PUCO does not believe that requiring all Tier 1 LECs to establish separate affiliates for the provision of in-region and out-of-region cellular service would impose an excessive or unnecessary financial burden on those entities. The potential costs of imposing additional structural separation requirements on Tier 1 LECs provision of cellular service at this time are different from the costs for either retaining structural separation for

BOC cellular service, or for extending such structural separation requirements for the first time to Tier 1 independent LECs. In the case of BOC cellular service, the costs of establishing the separate affiliate have already been incurred, whereas in the case of the Tier 1 independent LECs, the re-arrangement of existing corporate structures would entail some additional and immediate costs.

The PUCO nonetheless believes that imposing structural separation requirements on all of the Tier 1 LECs will serve the public interest. Requiring Tier 1 LECs to maintain separate affiliates for their provision of in-region and out-of-region cellular service will make it easier to track cellular costs and to keep those costs separate from regulated costs, because it limits joint and common costs between cellular and regulated telephone service thereby helping to insure that regulated ratepayers will not subsidize Tier 1 LECs competitive cellular service. Additionally, as stated previously in these comments, establishing a separate affiliate will increase the ability of both competitors, state regulators, and the FCC to detect any anti-competitive behavior.

On August 22, 1996, the PUCO issued a Finding and Order in Case No. 96-252-CT-ACE (In the Matter of the Application of GTE Card Services Incorporated dba GTE Long Distance For a Certification of Public Convenience and Necessity). In this case, MCI and AT&T filed objections to GTE Long Distance's (GTE-LD's) application. These objections stated, among other things, that GTE should not be permitted to jointly provide or market its long distance services with its local exchange services until all competitive barriers have been removed by the company for the provision of intraLATA services and local services. AT&T and MCI maintained that, until all such barriers are removed, fair competition cannot proliferate in GTE's service territory. Specifically, AT&T and MCI asserted that GTE's proposed interLATA operations in conjunction with local service offerings, which include intraLATA

services, would result in a single dominant carrier providing interLATA, intraLATA, and local exchange service.

The PUCO responded to these objections by requiring GTE-LD to abide by the PUCO's separate affiliate requirements and joint marketing prohibition. The PUCO also indicated that GTE-LD's affiliate relationship with GTE North makes it necessary for the PUCO to review periodically the appropriateness of GTE-LD's certificate in light of GTE North's furtherance of implementation of local competition in its service territory in accordance with the directives of the 1996 Telecommunications Act and the PUCO's local competition guidelines. Finally, the PUCO noted that its authorization of GTE-LD's certificate does not afford GTE-LD the necessary authority to resell basic local service or to offer basic switched local service in the State of Ohio.

Non-Tier 1 Independent and Rural LECs Applicability to Streamlined Section 22.903 or Nonstructural Competitive Safeguards

The FCC maintains that it is inappropriate to impose either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on any non-Tier 1 independent and rural LECs. NPRM at Paragraph 92. The FCC states in support of its conclusion that it believes that the cost and potential disruption of requiring non-Tier 1 LECs to establish new separate affiliates for the provision of cellular service would likely be significant, both in terms of the direct cost of incorporation and lost efficiencies of joint operations, facilities, and staff. NPRM at Paragraph 92.

The PUCO agrees with the tentative conclusion reached by the FCC. The PUCO contends that the costs of imposing either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on non-Tier 1 independent and rural LECs would have a relatively greater financial impact on those smaller carriers as compared to larger Tier 1 LECs. The PUCO submits that these smaller carriers

may not possess the financial or manpower capabilities to meet either of these requirements. Further, the PUCO believes the non-Tier 1 LECs lack the market power of the BOCs or other Tier 1 LECs with multistate operations and thus the ability to hinder emerging competition. Because of the costs of separate incorporation, and the lost economies of scope, we urge that non-Tier 1 independent and rural LECs be exempted, as proposed by the FCC, from compliance with either requirement.

NPRM SECTION VI

In-Region Versus Out-of-Region Nonstructural Safeguards

The FCC states that it does not believe that the competitive dangers of integrated LEC provision of landline and PCS outside of the local exchange service areas in which they are the incumbent LEC raises the same concerns as in-region integrated services. NPRM at Paragraph 114. The FCC further states that it has found that out-of-region competition from LECs offering integrated service packages has promoted local exchange competition. NPRM at Paragraph 114. As a result of these conclusions, the FCC proposes to limit LEC PCS nonstructural safeguards to in-region PCS service. NPRM at Paragraph 114.

The PUCO is not convinced by the FCC's argument for applying nonstructural safeguards only to the LECs in-region PCS service. The PUCO believes that structural safeguard requirements should be imposed on both the LECs in-region and out-of-region PCS service alike. The PUCO strongly believes that anti-competitive opportunities exist with the integrated LEC provision of landline and PCS outside of the local exchange service areas in which they are the incumbent LEC. As the PUCO expressed in its comments to the Commission in CC Docket No. 96-21, structural separation should prevent, or ease the detection of, local ratepayers

from subsidizing LEC out-of-region ventures, and will ensure that a LEC's market power is separated from that of its affiliate.

Small Telephone Companies Applicability to The FCC's Proposed Uniform Set of Competitive Safeguards

The FCC maintains that it is not appropriate to impose its proposed competitive safeguards on small telephone companies. NPRM at Paragraph 115. The FCC states in support of its conclusion that the benefits derived from applying these requirements on the small telephone companies do not outweigh the resulting costs. NPRM at Paragraph 115. The FCC seeks comment on its proposal and on what changes, if any, to its accounting rules are necessary or appropriate to ensure that small telephone companies not subject to its proposed competitive safeguards will not cross-subsidize PCS activities from regulated telephone operations. NPRM at Paragraph 115.

The PUCO agrees with the FCC's proposal not to subject small (non tier 1) local exchange carriers to its proposed competitive safeguards in their provision of PCS. The PUCO concurs with the FCC's conclusion that the benefits derived from imposing these proposed requirements on small telephone companies do not justify the resulting costs. Additionally, it believes that any action taken by the FCC to impose competitive safeguards or additional accounting requirements on small telephone companies in their provision of PCS service would likely discourage these companies from entry into the PCS markets. This anticipated response is contrary to the PUCO's desire to promote competition within the wireless market. Also, the PUCO submits that the small telephone companies' ability to leverage their bottleneck local exchange facilities is limited as compared to that of the BOCs and the larger Tier 1 LECs. As a result, the PUCO does not believe small companies pose a significant threat of anti-competitive conduct toward potential wireless

competitors and therefore need not be subjected to the Commission's proposed competitive safeguards.

Separate Affiliate Separation Conditions

The FCC seeks comment on its proposal to require the LECs separate affiliate that provides PCS to meet the separation requirements outlined in the 1985 Competitive Carrier Fifth Report and Order, with some modification of those requirements. NPRM at Paragraph 118.

The PUCO strongly disagrees with the FCC proposal to require the LECs corporate affiliate that provides PCS to meet the separation requirements outlined in the 1985 Competitive Carrier Fifth Report and Order. The PUCO favors subjecting Tier 1 LEC affiliates to the alternative structural affiliate safeguard requirements contained in the FCC's Computer II Order referenced in this NPRM at paragraph 110. The PUCO is of the opinion that these structural safeguard requirements are more stringent than the nonstructural safeguard requirements proposed by the FCC and, therefore, will protect better against cross-subsidizing PCS activities from regulated telephone operations.

Joint Marketing of PCS and LEC Landline Service

The FCC seeks comment on its proposal to permit joint marketing of PCS and LEC landline services on a compensatory, arm's-length basis, subject to its Part 64 cost allocation and affiliate transaction rules, and its proposed customer proprietary network information (CPNI) requirements for the provision of these services. NPRM at Paragraph 119.

The PUCO disagrees with this proposal to allow joint marketing of these services. The PUCO maintains that subjecting these joint marketing activities to the FCC's Part 64 cost allocation and affiliate transaction rules would not entirely

eliminate carriers ability to shift PCS costs to regulated operations. For this reason we would oppose this proposal and recommend that marketing of these services be done by the carriers respective separate affiliates. As mentioned previously in these comments, the PUCO maintains that prohibitions on joint marketing should continue, at a minimum, until the barriers into the local exchange market place have been removed. The PUCO submits that maintaining these requirements will actually assist in the development of local exchange competition, as it will be more difficult for LECs to discriminate in the favor of its own affiliates. Moreover, the PUCO notes that even with joint marketing prohibitions in place, the incumbent provider will realize benefits from the affiliate's utilization of its corporate name since potential customers will not be able to distinguish, when being marketed, between the incumbent provider and the affiliate.

FCC Annual Audit

Even with the additional Part 32 and 64 disclosures recommended by PacTel in its Nonstructural Safeguards Plan, the FCC believes that only a carrier's annual audit will determine if that carrier is in compliance with its accounting, affiliate transaction and cost allocation rules. NPRM at Paragraph 120. The FCC seeks comment on this conclusion. NPRM at Paragraph 120.

The PUCO agrees with the FCC in that the existing annual audit process should continue to ensure compliance with FCC accounting, affiliate transaction, and cost allocation rules.

Sunset Service Safeguards For LECs In-Region Provision of PCS

The FCC seeks comment on whether the service safeguards for in-region LEC provided PCS should be subject to a sunset provision. NPRM at Paragraph 125. The